

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 647 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AKNATH TUKARAM @ RAMDAS PATIL

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL (through legal aid) for Petitioner
MD ND GOHIL, LD. APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/03/98

ORAL JUDGEMENT

1. The appellant, Aknath Tukaram alias Ramdas Patil, aged around 40 years, having in his family his wife and two children stood charged with the offences punishable under sections 363, 366, 376 and 506 of the Indian Penal Code (for short 'IPC') before the learned Addl. Sessions Judge, Surat at Vyara. Upon the conclusion of trial he was convicted for the offences punishable under sections 376 and 366 of the IPC and sentenced to undergo rigorous imprisonment for a period of 7 years and 3 years respectively and to pay fine of Rs.5,000/- and Rs.3,000/and in default to undergo rigorous imprisonment for a period of one year and six months respectively by the learned Addl. Sessions Judge as per his impugned judgment and order dated 13/1/1995 in Sessions Case No. 228 of 1990. The accused has brought under challenge the

said order of conviction and sentence in this appeal.

2. During May 1990 the accused, belonging to village Ajante was carrying on business of chillies and he had the occasions to go to the place of complainant's parents at village Raniamba, Taluka Songadh. Complainant aged around 16 years to 18 years was staying with her parents. On 8/5/1990 the accused visited the place where the complainant was staying with her parents and informed that her mother said that she should accompany him to village Ajante where complainant's mother's sister Latkanben was also staying. On such statement, the complainant was ultimately sent with the accused for enabling her to go to her mother's sister's place at village Ajante, on 9/5/1990 during morning hours (at around 6.00 O'clock). The accused had first taken the complainant from village Raniamba to Ukai and then from Ukai to village Panchfuta. The accused had taken the complainant at the house of one Santosh Koli, a sugarcane cutter and originally belonging to village Eklahari and stayed there till upto 12/5/1990. The accused had sexual intercourse with the complainant against her wish during that period almost everyday. On 13/5/1990 the accused had taken the complainant to Udhna at the place of one Ambalal Pardesi and at that place also he had such intercourse with the complainant. On 15/5/1990 the accused had taken the complainant to village Althana and from there he had taken her to Sevali at the place of Ukhdu Mukadam on 16/5/1990. From there the accused had taken the complainant to village Ekklad on 17/5/1990. At that place the complainant had an occasion to inform one unknown person about what happened to her. That person brought Police Patel Baliram Vishnu at the place from where they had taken the complainant and accused to Ner Police Outpost. From the said Outpost the accused and the complainant were taken to Dhuliya Pllice Station in the State of Maharashtra where the complainant had given her complaint exh. 7. After registering the offence the accused and the complainant alongwith the papers of the complaint were sent to Songadh Police Station in the State of Gujarat. The accused and the complainant were examined by the concerned doctors. Their clothes were taken possession of under respective Panchnamas. The complainant was sent to New Civil Hospital at Surat for ascertainment of her age. Muddamal articles were sent to the Forensic Science Laboratory (FSL for short). Necessary investigation was carried out and the accused, after he was arrested, was sent up for sessions trial before the learned Addl. Sessions Judge in the aforesaid Sessions Case. Charge as per exh. 2 was framed against the accused who pleaded not guilty to the charge. Upon

the conclusion of trial and after recording statements of the accused u/S. 313 of the Code of Criminal Procedure, 1973 (II of 1974) and after hearing the learned P.P. and learned advocate for the accused the learned Addl. Sessions Judge rendered conviction and sentence against the accused as stated above. That is how the accused is before this Court.

3. I have heard the learned advocate who has been appointed through legal aid to defend the accused and the Ld. A.P.P. for the State. The short defence of the accused as submitted by the learned advocate for him has been that the girl whose age has not been established beyond reasonable doubt below 16 years had voluntarily and with consent entered into sexual relation with the accused during the period in question and, therefore, he could not have been convicted and sentenced under the provisions of sections 366 and 376 of the IPC. For the purpose of appreciating the submission made on behalf of the accused it would be of vital importance to state and consider the evidence of complainant Induben Marutirao P.W. 1 exh. 6 coupled with other pieces of evidence. However, before that is done the synopsis of evidence placed before the learned Addl. Sessions Judge might be made.

4. The prosecution examined Induben Marutirao, complainant, at exh. 6, P.W.2 Baliram Vishnu, Police Patel of village Aklad has been examined at exh. 8, Dr. Mafatbhai Ranchhodbhai Machhi, P.W. 3 who examined the accused and issued certificate exh. 10, has been examined at exh. 9, P.W. 4 Shankar Ramchandra, Police Station officer, Dhuliya has been examined at exh. 11, Ratilal Bhimsing Mahale, Police Head Constable of Ner Outpost, P.W. 5 has been examined at exh. 12. Santosh Yadav, P.W. 6 is one of the persons at whose place the accused and the complainant had stayed and he has been examined at exh. 13. P.W. 7 Maharu Shivram exh. 14 and P.W. 8 Samsuddin Usman exh. 15 are two other such persons. Mangabhai Chhanabhai P.W. 9 exh. 16 is a Panch witness for Panchnama concerning scene of offence exh. 17. Dr. Harshidaben Nathubhai Gamit P.W. 10 exh. 24 was the Medical Officer, Public Health Centre at Songadh and she has been examined in respect of her medical certificate concerning the complainant. Dr. Gaurang Somabhai P.W. 11 exh. 26 who happened to be Medical Officer in New Civil Hospital at Surat came to be examined at exh. 26 for late Dr. Barot's certificate exh. 27 pursuant to ossification test carried out by the said Dr. Barot. P.W. 12 Ashokbhai Shankarbhai has been examined at exh. 28 and complainant's mother Vimalbai

Maruti, P.W. 13 has been examined at exh. 31.

5. The prosecution has placed on record complaint at exh. 7, tmedical certificate concerning the accused at exh. 10, scene of offence panchnama exh. 17, panchnamas concerning the person of the accused as also the person of victim as also their clothes having been admitted in evidence by consent, are at exhs. 22 and 23. Medical certificate concerning complainant has been placed at exh. 25 and medical certificate with regard to age of the complainant is placed at exh. 27. The prosecution finally placed on record the FSL report with communication exh. 32.

6. The complainant Induben Marutiram has testified to the facts of her complaint and she has deposed that on the pretext of taking her to village Ajante, her mother's sister's place the accused had taken her from place to place as stated above and had subjected her to sexual intercourse against her will and without her consent. She has also referred to her complaint. It so happened that when she was last at some village (village Aklad) she had an occasion to be alone when she was in tears. The Sarpanch of the village had the occasion to see her and ask her what happened to her. She, therefore, narrated the story with regard to what happened to her. This resulted in the accused and the complainant being taken to Dhuliya Police Station, Via Ner Outpost. In her cross-examination she has in terms stated that she was being threatened and beaten from time to time and it appears from her cross-examination that she hardly found any occasion to complain about what was happening to her at the hands of the accused.

7. The evidence of the complainant clearly indicates that an illiterate village girl of around 16 to 18 years was taken by the complainant on a false pretext to the places other than the place where he was to take her. The facts narrated by the complainant clearly indicate that there was no scope for the complainant to voluntarily or with her consent to join the accused in the sexual relation to which she was subjected during the aforesaid period. It might be noted with care that the complainant was clearly of tender age. In that view of the matter it could hardly be said that she of her own accord and voluntarily entered into sexual relation with the accused.

8. As a matter of fact, the story stated by the complainant is so natural that it finds corroboration from the concerned witnesses who had the occasion to come

across the respective stages of the prosecution case. The learned Addl. Sessions Judge has given detailed reasons for accepting the prosecution case while appreciating the evidence of all the witnesses noted above. It would not be necessary to repeat the same here. Thus even though the ossification test reveals that the complainant might be aged 16 years to 18 years at the time of incident, that fact does not assist the accused in any manner. In fact, the facts clearly reveal that the accused was in complete command and control over the complainant and it was only when the complainant was fortuitously left alone that she was found in weeping condition by some unknown person resulting in unfolding the story about what actually happened to her.

9. In the result, bearing in mind the facts and circumstances of the case, this is not a case where the judgment and order of conviction and sentence as rendered by the learned Addl. Sessions Judge calls for any interference. In fact this is such a case as would require no indulgence that can be shown in favour of the accused.

The appeal of the accused is, therefore, hereby dismissed.

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